IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 22ND MARCH 2007 / 1ST CHAITHRA 1929

WP(C).No. 33346 of 2006(T)

PETITIONERS:
---

1. K.HAMZA, S/O.ALIPPU (LATE),
KUNNATH HOUSE, P.O.PARAL, THOOTHA,
VIA.ANAMANGAD, MALAPPURAM DISTRICT.

2. K.P.ABDUL SALAM, S/O.KUNHAMMED,
KARIKKUMPURATH HOUSE, ANAMANGAD.

3. E.P.SALIH, S/O.HAMZA,
ERASSERY PALLIYALIL HOUSE,
P.O.PARA, THOOTHA, MALAPPURAM DISTRICT.

BY ADV. SRI.SAJEEV KUMAR K.GOPAL
SRI.BINOY VASUDEVAN

RESPONDENTS:

1.PERINTALMANNA MUNICIPALITY REPRESENTED
BY ITS SECRETARY, PERINTHALMANNA.

2.THE SECRETARY, PERINTHALMANNA
MUNICIPALITY, PERINTHALMANNA.

3.THE SUB INSPECTOR OF POLICE,
PERINTHALMANNA.

4.THE REGIONAL TRANSPORT AUTHORITY,
MALAPPURAM REPRESENTED BY ITS SECRETARY.

*ADDL.R5.THE VALLUVANAD WELFARE SOCIETY, 223, KOLAKKADA BUILDING,
PATTAMBI ROAD, PERINTHALMANNA,
MALAPPURAM DISTRICT, REP. BY ITS CONVENOR.

*ADDL.R5 IS IMPLEADED AS PER THE ORDER DATED 4.1.2007 IN
I.A.NO.17837 OF 2006.

R1-R2 BY ADV. SRI.P.K.VIJAYAMOHANAN
R5 BY ADV.SRI.M.P.ASHOK KUMAR
R3-R4 BY GOVT. PLEADER MR.MATHEW G.VADAKKEL

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 22/03/2007 ALONG WITH W.P.C.NO.34371/06, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE,J.

- -

W.P.(C)Nos.33346 & 34371 of 2006

- -

Dated: 22nd March, 2007

JUDGMENT

Ext.P1 produced by the petitioners is copy of a rough sketch showing the position of three bus stands in Perinthalmanna and its near by roads. Ext.P2 series are copies of the news items which appeared in Malayala Manorama daily dated 07..12..2006, 08..12.2006 and 09..12..2006. Ext.P2 series are relied on to show that the newly introduced traffic regulations are creating considerable difficulties to the public and that there were demands from various quarters for withdrawal of the traffic arrangements. Referring to sections 472 and 473 of the Motor Vehicles Act and Rule 207 of the Kerala Motor Vehicles Rules, the petitioners on the ground raised seek the following relates in Writ Petition(C)No.33346/06:-

1. Issue a Writ of Mandamus directing respondents 1, 2 and 3 not to compel the petitioners and other stage carriages to touch the newly opened bus stand, namely Manazhi bus stand and Manathumangalam bus stand since there is no approval of the RTA in that regard.
2. Issue a Writ of Mandamus directing the respondents to open to public the old bus stand which is having the approval of the RTA, till a final decision is taken by the 4th respondent regarding

approval to the newly constructed bus stand.

3. Issue a Writ of Mandamus commanding the respondents to keep in abeyance the newly introduced traffic regulations/ reforms introduced in Perinthalmanna town consequent to the opening of Manazhi bus stand and Manathumangalam bus stand.

2. Writ Petition(C) No.34371/06 is filed by Perinthalmanna Bus Operators Association arraying the Traffic Advisory Board represented by its Chairman (RDO), the first respondent, the Perinthalmanna Municipality represented by its Secretary, the second respondent, the Dy.S.P. Perinthalmanna, the third respondent and the S.I. of Police (Traffic), the 4th respondent for appropriate directions for implementation of the traffic arrangements which are mentioned in Ext.P5 and the arrangements which are opposed to by the petitioners in Writ Petition(C) No.33346/06. The petitioner submits that the old municipal bus stand in Perinthalmanna town was closed down due to some political pressure. Accordingly, decisions were taken by the Traffic Advisory Board, the first respondent with regard to the entry of buses in the two new bus stands in Perinthalmanna town. As per the decision it was agreed to continue the present system of traffic and buses coming from Pattambi, Cheruplassery, etc. should pass

through the bye-pass and enter the Municipal bus stand and starting the service from the Municipal bus stand and pass through Ooty road and go to Pattambi. Ext.P1 is copy of the decision of the Traffic Advisory Committee dated 22..05..2006. The petitioner submits that though Ext.P1 decision was accepted, the same was not implemented due to certain political pressures. Therefore, representations were given by the petitioner-association which finally approached this court by filing Writ Petition (C) No.21006/06. This court passed Ext.P2 judgment on 08..08..2006. Under Ext.P2 judgment this court directed the first respondent, the RDO to hear the petitioners and take a decision on the representation made by them in relation to the traffic arrangements in Perinthalmanna town. On the basis of Ext.P2, the RDO who is the Chairman of the Traffic Advisory Board heard the petitioners as well as the general public and took a decision to seek the assistance of the National Transportation Planning and Research Centre (NATPAC) for the purpose of arranging the traffic in Perinthalmanna town. Ext.P3 dated 30..09..2006 is copy of the order issued by the first respondent in that regard. In obedience to Ext.P3 the National Transportation Planning and Research Centre took up the entire proposal. The main objective of the study was to formulate a short-term traffic circulation plan for private buses in Perinthalmanna

town so as to decongest the central junction area of the town which is heavily congested. After conducting detailed survey the National Transportation Planning and Research Centre submitted a report regarding the traffic regulation plan to be implemented in the town and Ext.P4 is copy of the plan which was accepted by the Traffic Advisory Committee on the basis of the detailed report which was submitted by the National Transportation Planning and Research Centre. The petitioner submits that as per Ext.P4 the buses plying from Pattambi should reach the central junction and then enter the Manathumangalam bus stand through the bye-pass road and then enter the central junction and then ply to Pattambi. The report of the National Transportation Planning and Research Centre was considered by the Traffic Advisory Board and it was decided to implement the report of the National Transportation Planning and Research Centre regarding traffic arrangements and public notices were issued in that regard. Ext.P5 dated 30..11..2006 is copy of the decision of the Traffic Advisory Committee. The petitioner submits that subsequent to Ext.P5 for some days the proposal was implemented and the stage carriage operators as well as general public were benefited. But later due to some extraneous considerations respondents 3 and 4 took a decision to deviate the traffic and insisted that the state carriage

operators shall go through the routes for which there are no permits. As such every stage carriage operators is compelled to ply 6 kms or more distance without permit. Ext.P6 Malayala Manorama news item dated 10..12..2006 is relied on by the petitioner. The petitioner submits that pointing out the illegal regulations of the police, the petitioner filed representation before the Chairman of the first respondent committee as well as before the District Collector. Ext.P7 is copy of the representation submitted before the Chairman of the first respondent committee and Ext.P8 is copy of the similar representation submitted before the District Collector. The petitioner alleged that though there is an authoritative report and the Traffic Advisory Committee took a decision to implement the report, it is highly illegal on the part of respondents 3 and 4 to make fresh arrangements every now and then. Due to the rearrangements made by the respondents 3 and 4, each and every passenger and stage carriage operators are in peril. The buses are compelled to ply through the routes not covered by their permits and passengers are compelled to travel unnecessary distances for catching buses. Respondents 3 an 4, it is contended have no right or authority to take decisions of their own choice and to sit in appeal over the decisions of the Traffic Advisory Committee. Ext.P9 copy of the plan showing the

position of the bus stands is also relied on. Raising various grounds the following are the relief specifically sought for by the petitioner:

1. Issue a Writ of Mandamus directing the respondents to implement the traffic arrangements accepted in Ext.P5.
2. Direct respondents 3 and 4 to see that the directions in Ext.P5 are complied with by all the stage carriage operators.

3. A detailed Counter Affidavit has been filed on behalf of respondents 1 and 2 in Writ Petition (C)No.33346/2006 in which the averments of the petitioners are denied and the grounds raised by them are refuted. It is stated in the Counter Affidavit that the old bus stand as discernable from Ext.P1 plan itself was at the heart of the Perinthalmanna town and close to the junction. The existence of the bus stand in that spot created serious traffic congestion in the town. Kozhikkode-Ooty bye-pass road was constructed to eliminate the traffic pressure in the town. A new bus stand was opened on the bye-pass road on 08..05..2006 and the bus stand on the side of the Kozhikkode-Palakkad National Highway 213 was developed and re-opened on 15..05..2006. It is submitted by the municipality has established the bus stand with the approval of the Government and

the Regional Transport Authority as required under section 117 of the Motor Vehicles Act and Rule 344 of the Kerala Motor Vehicles Rules. Regarding the acceptance of the bus stand offered by an individual on the side of the bye-pass road, it is submitted that there were Writ Petitions before this court for and against the acceptance of the bus stand and ultimately this court decided all the Writ Petitions by the judgment dated 03..03..2006 directing the municipality to open the bus stand within 15 days. For non compliance of the above direction a Contempt of Court Case, COC No.415/2006 was filed before this court on 21..03..2006 by one T.Mohammad Musthafa who had offered the bus stand at free of cost to the municipality. The municipality has applied for approval of the Regional Transport Authority vide Ext.R1 (a) request dated 17..03..2006. However, in view of the positive directions issued by the Division Bench the municipality became compelled to open the bus stand on 08..05..2006 on the basis of the decision taken by the Traffic Advisory Committee presided over by the RDO. Ext.R1(b) proceedings of the Traffic Advisory Committee dated 06..05..2006 is relied on in this context. It is pointed out that in the meeting which was presided over by the RDO and other members of the Committee including the Dy.S.P., the Executive Engineer (Roads), the Assistant

Motor Vehicles Inspector, the representatives of the bus operators association, merchants associations, Lions Club, Rotary Club, Taxi Operators Association, Auto Drivers Associations, and the like also attended. It was pursuant to the decision of the Traffic Advisory Committee that it was decided to open the bus stand on 08..05..2006, to close down the old municipal bus stand by 14..05..2006 and to re-open the new bus stand on 15..05..2006. The Traffic Advisory Committee further resolved to regulate the operation of stage carriages as detailed in Ext.R1(b). It is submitted that since the traffic arrangement with respect of commencement of services and termination of services of the stage carriages at the respective bus stands was decided by the committee in the presence of and after due deliberations by the officials and non-officials, the system had been continuing from May 2006. The approval of the RTA is only a formality and the application filed by the municipality to the RTA in that regard is pending. It is submitted that Writ Petition (C) Nos. 18344/06, 18903/06 and 21006/06 were filed before this court seeking modification of the traffic arrangements as distinct from the one settled under Ext.R1 (b). The municipality was not a party to any of these Writ Petitions. This court allowed the Writ Petitions directing the RDO who is the ex-officio Chairman of the Committee to consider

the representations. In compliance with those directions, objections were called for from the public to the proposed traffic regulations by publishing detailed notification. The suggestions and objections were considered at the meeting of the Traffic Advisory Committee held on 30..09..2006, but no consensus could be arrived at. Therefore, the matter was referred to National Transportation Planning and Research Centre. Ext.R1 (c) is copy of the proceedings of the RDO referring the matter to the National Transportation Planning and Research Centre. The National Transportation Planning and Research Centre submitted a report which was considered by the Traffic Advisory Committee at its meeting held on 29..11..2006, and the Committee by its decision resolved to implement the recommendation of the National Transportation Planning and Research Centre. With effect from 03..12..2006 the traffic arrangements recommended by the National Transportation Planning and Research Centre was implemented. Ext.R1(d) is relied on in this context. The Counter Affidavit highlights that the new arrangements have been introduced by the Traffic Advisory Committee which is headed by the RDO. The Municipal Chairman is only an ordinary member of the committee. The committee has representatives of all departments such as Motor Vehicles, Police, PWD (Roads), Association of Bus Operators, Taxis,

Autos, Tempos and participation of the Lion Club, Rotary Club and Merchants Association of the town. It is pointed out that more than about 500 stage carriages operate through the municipal bus stands and only the petitioners who are just 3 stage carriage operators are having complaints about the reorganization of the traffic system. Though the petitioners may be put to some inconvenience, considering the convenience of the public at large, the inconvenience if any of the petitioners is to be ignored. It is then submitted that Manazhi bus stand is not a new bus stand as the petitioners allege. It was in existence from 1999 onwards. For modernization the same was closed from 01..11..2005 to 14..05..2006. Being an existing bus stand the sanction of the RTA was sought on its re-opening. However, considering the rearrangement of the traffic on the basis of the recommendations of the National Transportation Planning and Research Centre under Ext.R1(d) the matter has been reported to the RTA vide Ext.R1(e). The maintainability of the Writ Petition is challenged on the ground that the grievances should have been voiced before the RTA and not before this court in the first instance.

4. The additional 5th respondent has also filed a Counter Affidavit. It is contended in the first instance that opening of the new bus stand was permitted by the decision of the Division Bench of this

court in Writ Petition(C) No.8016/05 a new bus stand was actually opened and buses started operating from that bus stand consequent to that judgment. Therefore, that judgment operates as res judicata against this Writ Petition. Copy of the common judgment in Writ Petition (C) No.8016/05 is produced as Ext.R5(a) and relied on. The Counter Affidavit alleges that the petitioner is guilty of suppression of material facts. It is stated that Perinthalmanna is a fast developing crowded town in Malappuram district. The distance from Perinthalmanna to major district headquarters like Kozhikkode, Palakkad and Thrissur are almost equal. Perinthalmanna junction is the crossing point of NH 213 from Kozhikkode to Palakkad and Nilambur-Perumbulavu state highway. It is the main road to Ooty and Mysore. The town is known as city of hospitals. Everyday thousands of patients from different parts of the district come to the town. Patients are coming even from towns in Karnataka and Tamilnadu. It is stated that on account of the un-scientific traffic reforms originally introduced by the RDO the town experienced traffic bottlenecks at various areas. Even ambulances were not able to pass through the junction freely on account of traffic blocks. The parking facility in the municipal bus stand which was situated at the junction was very limited, i.e. only for 10 buses. The number of buses plying through

the municipality were more than 400 and to avoid traffic congestion the municipality recently constructed two bus stands, one at Manathumangalam bye-pass road and another at Ponnyakurissi by the side NH 213. These bus stands are now functioning. By the traffic reforms of the RDO dated 08..05..2006 buses are compelled to ply all the length and breadth of Perinthalmanna town. Buses coming from Nilambur, Malappuram, Majeri, etc. are directed to go to Manazhi bus stand. Since the bye-pass bus stand is the ideal place for those buses and since the Manazhi bus stand was the ideal place for buses coming from other areas, the additional 6th respondent-society filed Writ Petition (C) No.18344/06 before this court and this court disposed of that Writ Petition on 20..07..2006. By the judgment of this court the RDO was directed to deal with the representations submitted the society and pass orders after hearing the society and anybody else who would like to be heard by inviting suggestions/objections from the public. When the RDO failed to comply with the directions the 6th respondent filed COC No.1453/06. During the pendency of the Contempt Case a public meeting was convened in the office of the RDO. It was attended by all concerned and Ext.R5(b) order dated 30..11..2006 was passed. Ext.R5(b) order was handed over to the additional 6th respondent during the

pendency of the Contempt Case. Consequent on the discussions which took place in the meeting the Chairman of the Traffic Advisory Committee issued Ext.R5(c) order. It is contended that the traffic reforms in a town is to be decided by a legally constituted body and the authorities like Police etc. In the instant case the present traffic arrangements were made consequent to the decision taken in the meeting held on 29..12..2006. That meeting had the representation of everybody concerned. The intention of the petitioners is indirectly to set aside the common decision taken in that meeting.

5. Elaborate submissions were addressed before me by Mr.Sajeevkumar K.Gopal, counsel for the petitioner in W.P.C.No.33346 of 2006, Mr.Dilip Mohan, counsel for the petitioner in W.P.C.No.34371 of 2006, Mr.M.P.Ashok Kumar, counsel for the additional respondent sought to be impleaded in both the Writ Petitions, Mr.P.K.Vijayamohanan, counsel for the Perintalmanna Municipality and Mr.Mathew G.Vadakkel, learned Government Pleader. Copy of the Traffic Managment Plan for Perinthalmanna Town submitted by the NATPAC (National Transportation Planning And Research Centre) submitted to the Perinthalmanna Municipal Council was placed before me by Mr.Vijayamohanan. Copies of the judgments in W.P.C.Nos.19706 of 2004, 35308 of 2005 and also the judgment of

the Division Bench in C.O.C.No.1453 of 2006 were placed before me.

6. Mr.Sajeevkumar K.Gopal in his submissions would refer to Ext.P1 and Exts.R1(a) and R1(e) in W.P.C.No.33346 of 2006. My attention was drawn by the counsel for to Sections 117, 137 and 138 of the Motor Vehicles Act and also to Rule 207 of the Kerala Motor Vehicles Rules apart from Rule 344 of the same Rules. Mr.Ashok Kumar would place strong reliance on the judgment of the Division Bench of this court in W.P.C.No.35308 of 2005 and submit that the arrangements which are impugned in W.P.C.NO.33346 of 2006 have been made on the basis of the judgment of the Division Bench. Learned counsel would refer to Exts.R5(b) and R5(c) in W.P.C.No.33346 of 2006. Mr.P.K.Vijayamohanan, Standing Counsel for the Municipality would refer to Exts.P1, R1(a), R1(b) and R1(c) apart from referring extensively to the report submitted by the NATPAC. Mr.Vijayamohanan also referred to Sectionsl 472 and 473 of the Municipalities Act and also to Rule 207 of the Kerala Motor Vehicles Rules. Mr.Sajeevkumar K.Gopal would rely on the judgment of this court in **Joshy Rapheal v. R.T.O., Ernakulam** (1991(1) KLT 288) and contend that the project report submitted by the NATPAC cannot have any probative force over the mandatory concurrence which is necessary from the R.T.A. as regards the commissioning of

new bus stands. Mr.Ashok Kumar relied on the judgments of this court in **Sankaran v. Palakkad Municipality** [2004(1) KLT Sh.Notes Page 14(case No.17] and **Sukumaran Nair V. Secretary Vazhoor Grama Panchayat** (2003(2) KLT 903).

7. Even though it cannot be said that the submissions of Mr.Saajeevkumar K.Gopal were totally unattractive, having due regard to the statutory provisions to which my attention was drawn by him, I have to notice the background in which the impugned traffic regulations in W.P.C.No.33346 of 2006 were introduced in the Perinthalmanna town. It was in the backdrop of the directions issuedl by a Division Bench that the Traffic Advisory Committee took the decision. The Municipality became compelled to implement the decision even before the concurrence of the R.T.A. was obtained in view of the contempt of court proceedings which were initiated by this court. The Municipality has actually sought for concurrence of the R.T.A. thereafter. Considering the circumstances under which the impugned traffic regulations were introduced in the town and noticing that the traffic regulations were absolutely necessary for deconjesting the bottleneck in the Perinthalmanna town, I do not think that this court will be justified in interdicting the implementation of the traffic regulations. W.P.C.No.33346 of 2006 will therefore stand dismissed.

W.P.C.No.34371 of 2006 will stand allowed directing respondents 3 and 4 to ensure that the directions in Ext.P5 are complied with by all the stage carriage operators.

The parties will suffer their respective costs in both the Writ Petitions.

srd **PIUS C.KURIAKOSE, JUDGE**